

EMPLOYMENT DISCRIMINATION

University of Texas Southwestern Medical Center v. Nassar, --- U.S. --- (2013)

Decided June 24, 2013

FACTS: Dr. Nassar was hired in 1995 as a member of the faculty of the University of Texas Southwestern Medical Center, as well as a staff physician at the Hospital, which was affiliated with the university. He left in 1998 for additional medical training and returned in 2001 as an assistant professor and a physician at the hospital, again. In 2004, Dr. Levine was hired as the University's Chief of Infectious Disease Medicine. She was Nassar's ultimate, although not immediate, superior. On different occasions over the ensuing years, Dr. Nassar alleged that Dr. Levine "was biased against him on account of his religion and ethnic heritage, a bias manifested by undeserved scrutiny of his billing practices and productivity, as well as comments that "Middle Easterners are lazy." He met with Dr. Fitz, the Chair of Internal Medicine, who was over Dr. Levine. Despite having received a promotion in 2006, with Levine's help, Nassar still believed she was biased against him. He attempted to "arrange to continue working at the Hospital without also being on the University's faculty." When he learned it might be possible, he resigned his position with the University, claiming in his letter that he was departing because of Levine's harassment. Dr. Fitz was upset by the accusations against Levine, believing her to be "publicly humiliated" and that she deserved to be "publicly exonerated." In the meantime, Dr. Fitz complained to the Hospital, protesting that the offer was inconsistent with agreements to the contrary. The Hospital withdrew the offer.

Nassar filed suit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., arguing that he was constructively discharged from the University by Levine's actions, and that Dr. Fitz's intervention with the Hospital was done in retaliation. The jury found in Nassar's favor on both counts. Upon appeal, the Fifth Circuit, the Court overturned the actual constructive discharge claim, but upheld the retaliation claim. The case was remanded for an adjustment of damages accordingly. The University requested certiorari and the U.S. Supreme Court granted review.

FACTS: Are the standards of a Title VII antiretaliation claim the same as for a status-based discrimination claim?

HOLDING: No

DISCUSSION: The Court noted that under such Title VII discrimination claims, it was unlawful for an employer to discriminate on the basis of "race, color, religion, sex, and national origin" – personal characteristics / status-based – as well as to act against an employee who opposes employment discrimination and the "employee's submission

of or support for a complaint that alleges employment discrimination.” The latter two, the retaliation claims, are covered by a separate section under Title VII.

The court looked to Price Waterhouse v. Hopkins¹ and noted that the causation standard for a status-based claim is whether a plaintiff “could show that one of the prohibited traits was a ‘motivating’ or ‘substantial’ factor in the employer’s decision.” If the plaintiff is able to do so, the burden shifts to the employer, ‘which could escape liability if it could prove that it would have taken the same employment action in the absence of all discriminatory animus.’” A modification to the statute, passed in 1991, effectively codified the lessened causation standard, but removed “the employer’s ability to defeat liability once a plaintiff proved the existence of an impermissible motivating factor.” The statutory change allowed a plaintiff to gain some relief “based solely on proof” that their status “was a motivating factor but allowed the employer to prove “that it would still have taken the same employment action” and thus escape monetary damages and a reinstatement order.

The antiretaliation provisions falls in a different part of Title VII, but still uses the “because” language that the Court had considered so difficult in the status-based claims. The Court noted that in this case, the “alleged wrongdoer differed” between the status-based claim and the retaliation claim.

After extensive parsing of the specific language in the relevant statutes, the Court concluded that “Title VIII retaliation claims must be proved according to the traditional principles of but-for causation, not the lessened causation test stated” for status-based claims. As such, this required “proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer.” The Court vacated the decision of the Fifth Circuit and remanded the case to the lower courts for further proceedings consistent with the Court’s opinion.

FULL TEXT OF OPINION: http://www.supremecourt.gov/opinions/12pdf/12-484_o759.pdf

¹ 490 U.S. 228 (1989).